

TITLE 5, CALIFORNIA CODE OF REGULATIONS

CALIFORNIA STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Classroom- and Nonclassroom-Based Instruction in Charter Schools
Implementation of the provisions of Senate Bill 740 (Chapter 892, Statutes of 2001)

March 12, 2002

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The State Board proposes to add Article 1.5 (commencing with Section 11963) to Subchapter 19 of Chapter 11, of Division 1 of Title 5 of the California Code of Regulations, to implement the classroom- and nonclassroom-based instruction provisions of Senate Bill 740 (Chapter 892, Statutes of 2001) as set forth in Education Code Sections 47612.5 and 47634.2.

PUBLIC HEARING

The State Board will hold a public hearing starting at 11:00 a.m. on May 30, 2002, at 721 Capitol Mall, Room 166, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the agency of such intent. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the State Board. All written comments must be received no later than the close of the public hearing schedule to start at 11:00 a.m., Thursday, May 30, 2002. Requests to present oral statements at the public hearing or written comments for the State Board's consideration should be directed to:

Pat McGinnis, Regulations Adoption Coordinator
California Department of Education
721 Capitol Mall, Room 556
P. O. Box 944272
Sacramento, California 94244-2720
Telephone: (916) 657-4669; FAX: (916) 657-3844

E-mail: pmcginni@cde.ca.gov

AUTHORITY AND REFERENCE

Authority for these regulations is found in Education Code Sections 33031, 47612.5, and 47634.2. Education Code Section 33031 is the State Board's general authority to adopt rules and regulations not inconsistent with the laws of this state for the government of the schools of the state (other than the University of California, California State University, and the California Community Colleges). Education Code Section 47612.5 requires that the State Board adopt regulations governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of nonclassroom-based instruction by charter schools (if the nonclassroom-based instruction comprises more than 20 percent of the charter school's instructional time).

Education Code Section 47634.2 requires that the State Board adopt regulations setting forth criteria for the determination of funding for nonclassroom-based instruction, specifying (at a minimum) that nonclassroom-based instruction is conducted for the instructional benefit of the student and substantially dedicated to that function. The criteria must include, at a minimum, consideration of the amount of a charter school's total budget expended on certificated employee salaries and benefits and on schoolsites (i.e., facilities that are used principally for classroom instruction) and the school's teacher-to-pupil ratio.

References are to Education Code sections 47604.3, 47605, 47612.5, 47614, 47634.2, and Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of the Education Code (including Section 51745.6).

INCORPORATION BY REFERENCE

These regulations incorporate by reference Part II of the 2001 edition of the California School Accounting Manual (Section 11963.2(b) of the regulations).

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

Senate Bill 740 (Chapter 892, Statutes of 2001) authorizes a charter school to receive funding for nonclassroom-based instruction only if a determination of funding request has been submitted by the charter school and approved by the State Board. The bill accomplishes this purpose by requiring that charter schools report average daily attendance (ADA) generated by students receiving nonclassroom-based instruction separately from ADA generated by students receiving classroom-based instruction settings. Beginning in 2001-02, no funding is to be apportioned for the former (nonclassroom-based ADA) unless a charter school has an approved determination of funding. The determination of funding is a percentage (equal to or less than 100 percent) by which the Superintendent of Public Instruction is to adjust nonclassroom-based ADA claimed for funding by each charter school prior to making apportionments based thereupon.

Senate Bill 740 requires the State Board to adopt regulations to define and establish general rules “governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of nonclassroom-based instruction by charter schools” offering nonclassroom-based other than that allowed as part of classroom-based instruction (i.e., no more than 20 percent of the minimum instructional time requires to be offered by law). SB 740 also requires the State Board to adopt regulations setting forth criteria for the determination of funding for nonclassroom-based instruction which, at a minimum, specify that the nonclassroom-based instruction is conducted for the instructional benefit of the student and substantially dedicated to that function. The criteria, among other factors, are to include the amount of the charter school’s total budget expended on certificated employee salaries and benefits and on schoolsites (a schoolsite being a facility used principally for classroom instruction) and on the teacher-pupil ratio in the school.

The proposed regulations comply with the requirements of SB 740 for the adoption of regulations to implement its provisions regarding nonclassroom-based instruction.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None. There is no obligation on the part of charter schools to provide nonclassroom-based instruction. A determination of funding request need only be submitted by a charter school that chooses to provide nonclassroom-based instruction for more than 20 percent of the minimum instructional time required by law.

Cost or savings to any state agency: Some state costs for reviewing and processing determination of funding requests submitted by charter schools for consideration and action by the State Board. These costs are to be addressed in the normal state budgeting process for workload adjustments.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17561: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impact on representative private person or business: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Impact on Business: The State Board has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California business to compete with business in other states.

Significant effect on housing costs: The State Board has made an initial determination that the proposed regulatory action would not affect housing costs.

Effect on small business: None. These regulations are directed to local educational agencies which are not small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the State Board must determine that no reasonable alternative considered by the State Board or that has otherwise been identified and brought to the attention of the State Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The purpose of the proposed regulations is to implement the provisions of Senate Bill 740 (Chapter 892, Statutes of 2001) pertaining to nonclassroom-based instruction in charter schools. The regulations are required to be adopted by SB 740. Accordingly, the State Board does not believe that existing law absent these regulations achieves the objectives set forth in law. There is no alternative way of complying with the requirement to adopt regulations. The State Board invites interested persons to present statements or arguments regarding alternatives to the proposed regulations at the above-mentioned hearing or during the written comment period.

ASSESSMENT REGARDING CREATION OR ELIMINATION OF JOBS IN CALIFORNIA

The State Board has made an assessment and determined that the adoption of the proposed regulations will neither create nor eliminate jobs in the State of California, nor will adoption of the proposed regulations result in the elimination of existing businesses or create or expand businesses in the State of California.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action should be directed to:

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721 Capitol Mall, Room 558
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Sacramento, CA 94244-2720
Telephone: (916) 657-5478; FAX number: (916) 653-7016
ggeeting@cde.ca.gov

Requests for a copy of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based should be directed to:

Pat McGinnis, Regulations Adoption Coordinator
California Department of Education
721 Capitol Mall, Room 556
P. O. Box 944272
Sacramento, CA 94244-2720
Telephone: (916) 657-4669; FAX number: (916) 657-3844

Or

Debra Strain, Regulations Analyst
Telephone (916) 657-4660; FAX number: (916) 657-3844

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process in her office at the address above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the address or telephone number listed above or by accessing the California Department of Education's website at <http://www.cde.ca.gov/regulations>. Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Regulations Adoption Coordinator or viewed on the website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing, the State Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, will be made available to the public for at least 15 days prior to the date on which the State Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which it is made available.

INITIAL STATEMENT OF REASONS

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATIONS ARE INTENDED TO ADDRESS

Senate Bill 740 (Chapter 892, Statutes of 2001) is intended to limit a charter school's funding for nonclassroom-based instruction in cases where nonclassroom-based instruction composes more than 20 percent of the instructional time offered by the charter school. It accomplishes this objective by requiring that average daily attendance (ADA) for affected pupils (i.e., pupils who are provided nonclassroom-based instruction for more than 20 percent of the instructional time offered) be subject to a determination of funding approved by the State Board of Education (State Board) and by requiring that nonclassroom-based ADA be separately identified for apportionment purposes. A charter school that does not have an approved determination of funding receives no revenue for the affected pupils who receive nonclassroom-based instruction.

A determination of funding is, in effect, a percentage by which a charter school's nonclassroom-based ADA is adjusted by the Superintendent of Public Instruction prior to funds being apportioned to the school based thereupon. The percentage may be 100 percent or less, and an individual charter school's determination of funding is subject to any conditions or limitations the State Board may prescribe. For 2001-02, the percentage is to be at least 90 percent; for 2002-03, no more than 80 percent; and for 2003-04 and thereafter, no more than 70 percent. However, if appropriate, the State Board may approve a higher or lower percentage. In signing SB 740 into law, the Governor requested that, in 2001-02, approved determinations of funding not be lower than 95 percent.

Prior to SB 740, charter schools were not required to identify nonclassroom-based ADA separately. [Charter schools were able voluntarily to identify ADA generated by pupils on independent study.]

SB 740 requires the State Board to adopt regulations to define and establish general rules "governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of nonclassroom-based instruction by charter schools." The rules apply only to nonclassroom-based instruction other than that allowed as part of classroom-based instruction (i.e., no more than 20 percent of the minimum instructional time required to be offered by law). SB 740 also requires the State Board to adopt regulations setting forth criteria for the determination of funding for nonclassroom-based instruction. At a minimum, the criteria are to specify that a charter school's nonclassroom-based instruction is conducted for the instructional benefit of the student and is substantially dedicated to that function. The criteria are also to include, among other factors, the amount of the charter school's total budget expended on certificated employee salaries and benefits and on schoolsites (a schoolsite being a facility used principally for classroom instruction) and on the teacher-pupil ratio in the school.

SPECIFIC PURPOSE OF THE REGULATIONS

The proposed regulations comply with the requirements of SB 740 for the adoption of regulations to implement the measure's provisions relating to nonclassroom-based instruction. The proposed regulations are consistent with the objective of SB 740 as described above.

AUTHORITY AND REFERENCE

Authority for these regulations is found in Education Code Sections 33031, 47612.5, and 47634.2. Education Code Section 33031 is the State Board's general authority to adopt rules and regulations not inconsistent with the laws of this state for the government of the schools of the state (other than the University of California, California State University, and the California Community Colleges). Education Code Section 47612.5 requires that the State Board adopt regulations governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of nonclassroom-based instruction by charter schools (if the nonclassroom-based instruction comprises more than 20 percent of the minimum instructional time required to be offered by law).

Education Code Section 47634.2 requires that the State Board adopt regulations setting forth criteria for the determination of funding for nonclassroom-based instruction, specifying (at a minimum) that nonclassroom-based instruction is conducted for the instructional benefit of the student and is substantially dedicated to that function. The criteria must also include, at a minimum, consideration of the amount of a charter school's total budget expended on certificated employee salaries and benefits and on schoolsites (i.e., facilities that are used principally for classroom instruction) and the school's teacher-to-pupil ratio.

References are to Education Code sections 47604.3, 47605, 47612.5, 47614, 47634.2, and Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of the Education Code (including Section 51745.6).

INCORPORATION BY REFERENCE

These regulations incorporate by reference Part II of the 2001 edition of the California School Accounting Manual (Section 11963.2(b) of the regulations).

NECESSITY

Section 11963(a)

The proposed subdivision draws together for clarity the provisions of law pertaining to classroom-based instruction in charter schools. This clarity is necessary because nonclassroom-based instruction is defined by statute as being all instruction that is not classroom-based.

Section 11963(b) and (c)

The proposed subdivisions define a key phrase of subdivision (a), i.e., “at the schoolsite,” to a greater extent than it is defined in statute. The definitions define how a facility can be determined to be used principally for classroom instruction, but does not require the facility solely be used for classroom instruction, which is consistent with the current practice of many charter schools. The definition also allows for field trips that may be attended by charter school pupils that would otherwise be at the schoolsite. These definitions are necessary to ensure that classroom-based instruction reflects the intent of SB 740.

Section 11963(d)

The proposed subdivision is needed to ensure that these regulations are not applied beyond their intended scope.

Section 11963.1

This section clarifies that the introduction (in statute) of a new name for instruction that is carried on outside of the classroom setting (i.e., nonclassroom-based instruction) does not change the fact that all such nonclassroom-based instruction is subject to the requirements of Article 5.5 (commencing with Section 51745) of Chapter 4 of Part 28 of the Education Code (i.e., the laws governing independent study). This is consistent with the provisions of Education Code Section 51747.3 which (notwithstanding any other provision of law) state, in effect, that independent study requirements pertain no matter how independent study may be characterized.

Section 11963.2(a)

This subdivision states clearly what a determination of funding is (a percentage by which nonclassroom-based ADA is adjusted) and how it is used in apportioning funds to charter schools. It makes clear that a determination of funding may be granted only if a determination of funding is requested by a charter school. It specifies that a determination of funding may never be more than 100 percent. It specifies that a determination of funding must be at least 95 percent in 2001-02 (pursuant to the Governor’s request in signing SB 740), and shall be 80 percent in 2002-03 and 70 percent in 2003-04 and thereafter. Although SB 740 states that the determinations of funding shall be not more than 80 percent and 70 percent in 2002-03 and 2003-04 and thereafter, respectively, the State Board chose 80 percent and 70 percent to provide guidance to most charter schools about the funding levels they can expect in the future (for budgeting stability, for example). However, the percentage may be higher (up to 100 percent) or lower (down to zero percent beginning in 2002-03) should the State Board determine that additional information provided by or learned of a particular charter school is appropriate. This is to allow a charter school to demonstrate that its nonclassroom-based instruction is conducted for the instructional benefit of the student and is substantially dedicated to that function. It specifies that a material change in a charter pertaining to nonclassroom-based instruction triggers the need for a new determination of funding. “Material change” is defined very reasonably as any significant change in resources devoted to nonclassroom-based instruction, courses to be offered through nonclassroom-

based instruction, or delivery of educational services to pupils receiving nonclassroom-based instruction.

Section 11963.2(b)

This subdivision specifies the content of form (or set of forms) to be completed by a charter schools desiring a determination of funding. This content has been determined to be the financial information minimally necessary from an applicant charter school in order for a sound recommendation (and subsequently a sound decision) to be made regarding the school's determination of funding request. The content of the form(s) is limited to that specified in the regulations absent specific action by the State Board of Education and in accordance with the Administrative Procedure Act.

Section 11963.2(c)

This subdivision specifies additional content which, taken together with the financial information specified in subdivision (b), provides the balance of the information minimally necessary from an applicant charter school in order for a sound decision recommendation (and subsequently a sound decision) to be made regarding the school's determination of funding request. The subdivision, consistent with statute, makes it clear that a "substantially complete" request is satisfactory for purposes of review and action by the State Board of Education.

Section 11963.3(a)

This subdivision requires that determination of funding requests be reviewed by the California Department of Education and that a recommendation on each request be developed by the Advisory Commission on Charter Schools. The subdivision establishes criteria by which determination of funding requests are to be evaluated. The principal criterion is that the charter school's expenditures for the preceding year for teachers (meeting specified requirements) equal or exceed 50 percent of the school's public revenues (with specified exclusions). The State Board chose 50 percent because this is the average percentage of certificated staff salaries and benefits in non-charter public schools. If the principal criterion is met and the request is otherwise complete, it is to be forwarded to the State Board with a recommendation for approval and, if applicable, a statement of reasons justifying approval of a percentage greater than 95 percent (for 2001-02), 80 percent (for 2002-03), or 70 percent (for 2003-04 and thereafter). If the principal criterion is not met, then additional detail on expenditures is to be provided, and three options for dealing with such requests are specified, including asking for still more information from the charter school, recommending approval of the request at a reduced level, or recommending denial of the request. The subdivision makes it clear that information from credible sources other than the applicant charter schools may be taken into account in the evaluation of the requests and the development of recommendations.

Section 11963.3(b)

This subdivision establishes authority for additional information to be requested from an applicant charter school regarding its determination of funding request, and specifies conditions under which a request may rise to the level of a reasonable inquiry to which the school must respond under law.

Section 11963.3(c)

This subdivision clarifies that if a percentage higher than that specified for a fiscal year (i.e., 95 percent for 2001-02, 80 percent for 2002-03, and 70 percent for 2003-04 and thereafter) is recommended to the State Board, reasons must be stated.

Section 11963.3(d)

This subdivision clarifies that if a determination of funding request is recommended for denial or for a lower-than-requested percentage, then a written statement of reasons must accompany the recommendation and, if appropriate, a description of how the charter school may address any problems or deficiencies.

Section 11963.3(e)

This subdivision establishes, in effect, a presumption for approval of determination of funding requests for charter schools that provide instructional services to members of the California Conservation Corps (CCC) or a local conservation corps (certified by the CCC). This provision is in keeping with the Governor's request in signing SB 740 into law.

Section 11963.3(f)

This subdivision establishes a maximum timeline for determination of funding requests to be presented to the State Board of Education. Beginning in 2002-03, the subdivision establishes a window for the submission of requests to ensure that they are reviewed and acted upon in a timely way. The 90-day timeframe is considered to be sufficient for CDE staff and the Advisory Commission to review the application and obtain additional information, if necessary, to make a recommendation to the State Board, and for the State Board to act on the recommendation. Authority is established for the State Board to grant an exception to the timeline for good cause, thereby ensuring that no charter school will lose funding generated by pupils receiving nonclassroom-based instruction by inadvertently missing the window.

Section 11963.3(g)

This subdivision allows a charter school to seek a change in its determination of funding, but establishes a reasonable limit on new requests (one per fiscal year).

Section 11963.4

This section clarifies that a charter school's determination of funding may be terminated for failure to provide updated or additional information as may be requested of it, or if credible information from any source supports termination.